

SUBJECT: ACTIONS OF EMPLOYEE WHOSE RELATIVE IS COMPUTER VENDOR

SUMMARY:

A vendor who is a member of the immediate family of a public employee cannot bid on a contract with the employee's agency if the employee is authorized to perform any action regarding the contract.

QUESTION:

A computer vendor has questioned whether an immediate relative of a State employee would be permitted to submit bids on items purchased within the employee's department.

DISCUSSION:

This opinion is rendered in response to a letter dated December 2, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-700(B) provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

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(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Immediate family is defined in Section 8-13-100(18) as:

- (a) a child residing in a candidate's, public official's, public member's or public employee's household;
- (b) a spouse of a candidate, public official, public member, or public employee; or
- (c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's or public employee's spouse as a dependent for income tax purposes.

Economic interest is defined in Section 8-13-100(11) as:

- (a) "Economic Interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
- (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

The public employee would not be allowed to participate in any matters affecting a contract on which a member of his immediate family was bidding. Those actions would encompass writing or preparing specifications, acceptance of bids, award of the contract, or other action on the bid or award of the contract.

The State Ethics Commission further notes Section 8-13-775 which provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

In accordance with this section, a member of the public employee's immediate family would be prohibited from contracting with the agency if the employee is authorized to perform any official

functions regarding the contract, including writing or preparing specifications, acceptance of bids, award of the contract or other action on the preparation or award of the contract, regardless of whether the public employee followed the provisions of Section 8-13-700(B).